

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:06CR153CDP
)	
DALE R. BAUDENSITEL,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

Defendant Dale R. Baudendistel has requested that he be allowed to remain free on bond pending appeal, pursuant to 18 U.S.C. § 3143(b). I find that defendant has shown, by clear and convincing evidence, that he is not likely to flee or pose a danger to any member of the community.

The appeal is not for purposes of delay and the appeal raises a substantial question of law or fact likely to result in a greatly reduced sentence. As I stated at the sentencing hearing, if the defendant's guidelines range had been as the parties contemplated at the time of the guilty plea – and had it actually been an advisory guidelines range – I would have most likely sentenced defendant either to a term of probation without any jail time, or to the minimum under those advisory guidelines, which would have been a term of five months in jail followed by five months in home confinement. However, for the reasons I stated at the hearing, I

do not believe I have the option of sentencing defendant below the twenty-four month minimum under the sentencing guidelines, which are mandatory for this case. The substantial question of law is whether my interpretation of the safety-valve statute, under the facts of this case, is correct, and I believe that reasonable minds could certainly differ on that.


Additionally, defendant's circumstances meet the extraordinary circumstances test set out in 18 U.S.C. § 3145(c), which justifies an order allowing bond even under 18 U.S.C. § 3143(b)(2). Defendant has no prior convictions and his crime in this case was completely out of the ordinary for him. He is not a drug user or dealer; there is no evidence that he has ever actually sold marijuana or any other drug to any person. He has the full support of his employer and has an impeccable work record, having worked at the same company for many years. He needs to work so he can provide for the family members who are dependent on him for their support. While many defendants are needed to support their families, this defendant is very different from most drug defendants, because of his substantial work history and his lack of any prior criminal activity.

Finally, because the length of time for the appeal would likely exceed any sentence I would have given him had I had any discretion to give him a lower sentence, the interests of justice are served by allowing him to remain on bond

pending appeal.

Accordingly,

IT IS HEREBY ORDERED that defendant's motion for release pending appeal [#38] is granted, and defendant shall be allowed to remain free on the existing bond with the same conditions of release pending resolution of his appeal.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 5th day of June, 2007.